

# CLARK HILL

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June 30, 2011

***BY ECF, FACSIMILE, AND FIRST CLASS MAIL***

Hon. Robert D. Drain  
United States Bankruptcy Court  
for the Southern District of New York  
300 Quarropas Street  
White Plains, NY 10601

*Re: In re DPH Holdings, Case No. 05-44481; Delphi Corporation v. Detroit Products Corporation f/k/a Doshi Prettl International, Adv. Proc. No. 07-02211*

Dear Judge Drain:

At the hearing held on June 21, 2011, you instructed counsel to inform you by Thursday, June 30, 2011 regarding the schedule of transfers attached to each of the Debtor's proposed amended complaints, and whether the revised schedules to be prepared by Debtor eliminate "double counting" to obviate the relation back issue on these specific transfers. *See, June 21, 2011 transcript* at pp. 239-240, *et. seq.*

The Debtor timely provided us with a revised transfer schedule (attached hereto as Exhibit 1) which addresses the double counting error. Nevertheless, the second revised schedule (like the original schedule attached to the complaint and the first revised schedule attached to the proposed amended complaint) continues to reflect blanks in the antecedent debt column for transfers dated September 6, 2005 and October 6, 2005 and, therefore, fails to comport with the Court's ruling made during the June 21<sup>st</sup> hearing. *See, June 21, 2011 transcript* at pp. 140-142 (attached as Exhibit 2). Accordingly, these transfers should be stricken from any future schedule should the Court grant, either in whole or in part, the Debtor's motion for leave to amend complaint.

Pursuant to your instructions, while we raised this issue with Debtor's counsel, we do not anticipate resolving this issue within the time frame provided by the Court to make this report. We, therefore, request the Court to rule on this issue.

Hon. Robert D. Drain  
June 30, 2011  
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If you have any questions about this issue or require additional information, please do not hesitate to contact me.

Respectfully submitted,

CLARK HILL PLC

A handwritten signature in black ink, appearing to read 'M. Nayak', is written over the printed name 'Mahesh K. Nayak'.

Mahesh K. Nayak

Enclosures/Exhibits

cc Cynthia Haffey, Esq., Counsel for Plaintiff (via electronic mail and ECF)  
Preference Defense Counsel (via electronic mail and ECF)

# EXHIBIT 1

Doshi Preiti Reconciliation

AMENDED EXHIBIT 1 DETAIL

Sum of Transfer Amounts									
Transfer Dates and Types		Antecedent Debt	Total	Total (Repeat)	Original \$	Difference	Credit	Reconciled Claim Total	Reconciliation Explanation
8/2/2005	D0550011476	\$ 845,794.20	\$ 845,794.20						
	D0550011477	\$ 43,255.50	\$ 43,255.50						
	D0550011478	\$ 92,885.40	\$ 92,885.40						
	D0550015472	\$ 168,963.30	\$ 168,963.30						
	D0550015473	\$ 150,258.24	\$ 150,258.24						
	D0550024179	\$ 123,053.82	\$ 123,053.82						
	D0550024181	\$ 408,677.70	\$ 408,677.70						
	D0550025690	\$ 187,110.33	\$ 187,110.33						
	D0550054282	\$ 47,458.08	\$ 47,458.08						
	D0550054285	\$ 52,596.40	\$ 52,596.40						
8/2/2005	D0550054290	\$ 44,873.92	\$ 44,873.92						
	D0550065751	\$ 87.05	\$ 87.05						
	D0550065752	\$ 55,128.32	\$ 55,128.32						
	D0550065753	\$ 7,451.08	\$ 7,451.08						
	D0550072835	\$ 8,760.44	\$ 8,760.44						
8/2/2005 Total		\$ 2,236,353.78	\$ 2,236,353.78	\$ 2,234,910.78	\$ 1,443.00	(\$1,443.00)		\$2,234,910.78	See Note (A)
8/29/2005	D0550065751	\$ 64.80	\$ 64.80						
	D0550065752	\$ 655.20	\$ 655.20						
8/29/2005 Total		\$ 720.00	\$ 720.00	\$ 720.00	\$ 0			\$720.00	
9/2/2005	D0550011476	\$ 371,715.00	\$ 371,715.00						
	D0550011477	\$ 14,447.10	\$ 14,447.10						
	D0550011478	\$ 54,815.78	\$ 54,815.78						
	D0550015472	\$ 83,123.82	\$ 83,123.82						
	D0550015473	\$ 65,876.58	\$ 65,876.58						
	D0550024179	\$ 75,863.52	\$ 75,863.52						
	D0550024181	\$ 231,038.24	\$ 231,038.24						
	D0550025690	\$ 88,565.40	\$ 88,565.40						
	D0550054282	\$ 44,821.52	\$ 44,821.52						
	D0550054285	\$ 86,861.81	\$ 86,861.81						
9/2/2005	D0550054290	\$ 117,208.00	\$ 117,208.00						
	D0550065752	\$ 91,576.96	\$ 91,576.96						
	D0550065753	\$ 19,159.92	\$ 19,159.92						
	D0550072835	\$ 51,197.40	\$ 51,197.40						
9/2/2005 Total		\$ 1,396,271.05	\$ 1,396,271.05	\$ 1,396,271.05	\$ 0			\$1,396,271.05	

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Doshi Prell Reconciliation

Transfer Dates and Types	Antecedent Debt	Total	Total (Repeat)	Original \$	Difference	Credit	Reconciled Claim Total	Reconciliation Explanation
9/6/2005 Total	9/6/2005 (blank)	\$ 2,697,252.98	\$ 2,697,252.98				\$ 2,697,252.98	
9/19/2005 Total	D0550077663	\$ 2,697,252.98	\$ 2,697,252.98	\$2,697,252.98	\$0			
	D0550077674	\$ 6,591.40	\$ 6,591.40					
	D0550077674	\$ 25,116.00	\$ 25,116.00					
9/19/2005 Total		\$ 31,707.40	\$ 31,707.40	\$ 31,707.40	\$0		\$ 31,707.40	
9/20/2005 Total	D0550011476	\$ 89,211.60	\$ 89,211.60					
	D0550015473	\$ 31,369.80	\$ 31,369.80					
	D0550024181	\$ 84,181.88	\$ 84,181.88					
	D0550025690	\$ 35,426.16	\$ 35,426.16					
	D0550065752	\$ 25,616.64	\$ 25,616.64					
9/20/2005 Total		\$ 265,806.08	\$ 265,806.08	\$ 265,806.08	\$0		\$ 265,806.08	
9/21/2005 Total	D0550011476	\$ 74,343.00	\$ 74,343.00					
	D0550011477	\$ 5,778.84	\$ 5,778.84					
	D0550011478	\$ 15,513.90	\$ 15,513.90					
	D0550015472	\$ 30,786.60	\$ 30,786.60					
	D0550015473	\$ 15,684.90	\$ 15,684.90					
	D0550024179	\$ 15,804.90	\$ 15,804.90					
	D0550024181	\$ 91,542.60	\$ 91,542.60					
	D0550025690	\$ 29,521.80	\$ 29,521.80					
	D0550077663	\$ 9,887.10	\$ 9,887.10					
9/21/2005 Total		\$ 288,863.64	\$ 288,863.64	\$ 288,863.64	\$0		\$ 288,863.64	
9/22/2005 Total	D0550011476	\$ 74,343.00	\$ 74,343.00					
	D0550011477	\$ 8,668.26	\$ 8,668.26					
	D0550011478	\$ 21,719.46	\$ 21,719.46					
	D0550024179	\$ 15,804.90	\$ 15,804.90					
	D0550024181	\$ 38,651.32	\$ 38,651.32					
	D0550077663	\$ 16,478.50	\$ 16,478.50					
	D0550077674	\$ 28,129.92	\$ 28,129.92					
	D0550077675	\$ 2,102.64	\$ 2,102.64					
	D0550079109	\$ 48,222.72	\$ 48,222.72					
9/22/2005 Total		\$ 254,120.72	\$ 254,120.72	\$ 254,120.72	\$0		\$ 254,120.72	
9/26/2005 Total	D0550011476	\$ 74,343.00	\$ 74,343.00					
	D0550024181	\$ 34,419.66	\$ 34,419.66					
	D0550065752	\$ 22,414.56	\$ 22,414.56					
	D0550079107	\$ 2,102.64	\$ 2,102.64					
	D0550079109	\$ 24,111.36	\$ 24,111.36					
	D0550079117	\$ 6,591.40	\$ 6,591.40					
9/26/2005 Total		\$ 163,982.62	\$ 163,982.62	\$ 163,982.62	\$0		\$ 163,982.62	

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Doshi Pretti Reconciliation

Transfer Dates and Types	Antecedent Debt	Total	Total (Repeat)	Original \$	Difference	Credit	Reconciled Claim Total	Reconciliation Explanation
9/28/2005	D055001476	\$ 89,211.60	\$ 89,211.60					
	D055001477	\$ 5,778.84	\$ 5,778.84					
	D055001478	\$ 27,925.02	\$ 27,925.02					
	D0550015472	\$ 30,786.60	\$ 30,786.60					
	D0550024179	\$ 22,126.86	\$ 22,126.86					
	D0550024181	\$ 45,771.30	\$ 45,771.30					
	D0550025690	\$ 41,330.52	\$ 41,330.52					
		\$ 262,930.74	\$ 262,930.74	\$ 262,930.74	\$ 0		\$ 262,930.74	
9/28/2005 Total								
10/3/2005	D055001476	\$ 72,499.50	\$ 72,499.50					
	D0550015473	\$ 28,345.68	\$ 28,345.68					
	D0550024181	\$ 89,894.82	\$ 89,894.82					
	D0550065752	\$ 38,424.96	\$ 38,424.96					
		\$ 229,164.96	\$ 229,164.96	\$ 229,164.96	\$ 0		\$ 229,164.96	
10/3/2005 Total								
10/4/2005	D055001476	\$ 798,087.18	\$ 798,087.18					
	D055001477	\$ 43,393.74	\$ 43,393.74					
	D055001478	\$ 108,359.70	\$ 108,359.70					
	D0550015472	\$ 221,663.52	\$ 221,663.52					
	D0550015473	\$ 153,302.05	\$ 153,302.05					
	D0550024179	\$ 151,727.04	\$ 151,727.04					
	D0550024181	\$ 624,850.38	\$ 624,850.38					
	D0550025690	\$ 183,035.16	\$ 183,035.16					
	D0550054282	\$ 116,008.64	\$ 116,008.64					
	D0550054285	\$ 138,959.69	\$ 138,959.69					
	D0550054290	\$ 126,584.64	\$ 126,584.64					
	D0550065751	\$ 6,470.16	\$ 6,470.16					
	D0550065752	\$ 155,834.56	\$ 155,834.56					
	D0550072835	\$ 95,633.28	\$ 95,633.28					
	D0550077663	\$ 23,069.90	\$ 23,069.90					
	D0550077675	\$ 1,401.76	\$ 1,401.76					
	D0550079109	\$ 31,668.48	\$ 31,668.48					
	D0550079117	\$ 12,823.60	\$ 12,823.60					
10/4/2005 Total		\$ 2,992,873.48	\$ 2,992,873.48	\$ 295,620.50	\$ 2,697,252.98	(\$2,697,252.98)	\$ 295,620.50	See Note (A)
10/6/2005 (blank)		\$ 589,590.73	\$ 589,590.73					
10/6/2005 Total		\$ 589,590.73	\$ 589,590.73	\$ 589,590.73	\$ 0		\$ 589,590.73	
Grand Total		\$ 11,409,638.18	\$ 11,409,638.18	\$ 8,710,942.20	\$ 2,698,695.98	(\$2,698,695.98)	\$ 8,710,942.20	

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Doshi Pretti Reconciliation

Transfer Dates and Types	Antecedent Debt	Total	Total (Repeat)	Original \$	Difference	Credit	Reconciled Claim Total	Reconciliation Explanation
Notes: Reconciled Claim is sum of "Reconciled Claim Total" Column								
(A): For dates reflecting a "Credit," DAS recorded a credit in the amount indicated on that date. The credit was netted out of the preference amount in the Original Complaint, but not in the Amended Complaint. The credit detail is attached.								

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Doshi Prettl Credits

Adversary Proceeding No	Transfer Dates	Transfer Recipient(s)	Transfer Amounts	Antecedent Debt	Antecedent Debt Type
07-02211	10/4/2005	DOSHI PRETTL INTERNATIONAL	\$ (2,697,252.98)	EM04ADM2005090626972	INVOICE
07-02211	8/2/2005	DOSHI PRETTL INTERNATIONAL	\$ (1,443.00)	JM04ADM205918363	INVOICE

TOTAL CREDITS: (\$2,698,695.98)



# EXHIBIT 2

1 mean, an essential element of 547(b) is, that that debt was  
2 antecedent. If you cannot satisfy that -- if you cannot  
3 satisfy the antecedent element, you do not have a cognizable --


4 THE COURT: I understand, but again, the dates reflect  
5 antecedence -- E-N-C-E. The ship date's before the check.  
6 That's -- for pleading purposes that's enough for me.

7 MR. KOCHIS: Okay. Thank you, Your Honor.

8 MS. HAFLEY: Your Honor, I just have one last -- I  
9 guess to renew the argument. While we believe -- even after  
10 the blanks on the complaint -- that we have sufficiently pled  
11 antecedent debt. If this Court did not believe so, we would  
12 ask the Court -- we have not had a motion to a leave, yet;  
13 these are just proposed motions for leave -- we would ask the  
14 Court's indulgence to give us a very short period of time --

15 THE COURT: I'm going to cut you short on this because  
16 I know people will want to respond to it. We've only covered  
17 one of several issues that have been raised, and I want to  
18 consider whether there should be leave to make a motion to  
19 amend, in light of the entire record.

20 MS. HAFLEY: Okay. I was just going to provide the  
21 Court a cite, but I'll do that at some other time; thank you,  
22 Your Honor.

23  THE COURT: Yeah, that's fine. Okay, all right. So,  
24 I think I've been clear that on its face, the forms of

25 complaint -- or the form complaint -- prepared by Butzel Long

DPH HOLDINGS CORP., ET AL.

1 is -- does not, in my view, satisfy Twombly and Iqbal and  
2 HydroGen and similar cases, where neither the body of the  
3 complaint nor the schedule attached to it, shows an actual  
4 recorded entry, ostensibly as set forth in the complaint of a  
5 payable being entered on the debtors' system. And you need to  
6 have that I believe, in light of the fact that the body of the  
7 complaint itself really only refers to this payable system, and  
8 obviously that means one looks to the schedule, and if you  
9 don't see the entry, then I believe that you can't conclude  
10 that there is in fact a payable based on the allegations in the  
11 complaint.

12 As I said during oral argument, the fact that a  
13 payment was made, and that's alleged in a different column,  
14 could just as easily be a payment on account of COD or payment  
15 in advance demand. And by forcing the defendant into discovery  
16 on that issue, the plaintiff would be leapfrogging the  
17 requirement to show more than simply a conclusory pleading of  
18 the law as opposed to pleading of facts entitled to the  
19 assumption or presumption of evidence for purposes of delay.

20 Most of these complaints, I think -- well, I think  
21 with the exception of DSSI and -- you know what, I've lost the  
22 last one, the one that was blank and the --

23 MS. HAFLEY: Magnesium Electronic --

24 THE COURT: Yes, thank you.

25 MS. HAFLEY: -- I think, Your Honor.

1 THE COURT: -- list PO or invoice numbers and  
2 letters -- although some of them have a blank entry or two,  
3 sometimes for a lot of money, like Doshi has one for about  
4 2,000,000 dollars, I think -- that's blank, and my ruling would  
5 go for not only DSSI -- or wherever the column is missing or  
6 empty -- but where there's specific transfers they're not  
7 covered in the column.

8 Okay, so someone was going to cover then, the debtor,  
9 as far as 547?

10 MR. KLEIN: Good afternoon, Your Honor, Sheldon Klein  
11 of Butzel Long, on behalf of the plaintiff.

12 It probably doesn't need to be said again, but just to  
13 give us a starting point, 547(b)(2) does require that the  
14 payment is on account of an antecedent debt owed by the debtor;  
15 I will be addressing the element of owed by the debtor. Now,  
16 in all of these complaints, DAS brings the claim as the debtor  
17 and the claims fall into two different groups; one, in which  
18 DAS is identified both as the contracting entity and as the  
19 transferor of the money, and other claims in which DAS is the  
20 transferor but is only one of multiple contracting entities.  
21 So DAS and an additional Delphi entity is identified as the  
22 contracting entity; that is very much the minority of the  
23 claims, most -- substantial majority of the claims, DAS is both  
24 the transferor and the contracting entity, and on its face, I  
25 don't know what else can be --